

**REMARKS**

Applicant has carefully reviewed and considered the Office Action mailed on October 7, 2010. By virtue of this amendment, no claims are amended. Claims 1- 26 and 31-34 are pending in this application and listed above for the Examiner's convenience, with claims 1, 11, 21, 24, 31, and 33 being independent.

Claims 1-6, 8, 10, 21, 23, 31, and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Erimli (US Patent No. 6,980,520) in view of West et al. (US Patent No.: 7,006,438, hereafter, West). Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Erimli in view of West and further in view of Kim et al. (US Patent Publication No. 2003/0219027). Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Erimli in view of West and further in view of Montalvo et al. (US Patent Publication No. 2003/0147385). Claims 11-20, 24, 26, 33, and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Erimli in view of West and further in view of Levine (US Patent No. 6,504,818). Claims 22 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Erimli (US Patent No. 6,980,520) in view of West and further in view of Leach, JR. et al (US Patent Publication No. 2002/0089994).

In response, Applicant respectfully disagrees, because the rejection fails to establish a *prima facie* case of obviousness. For example, the rejection does not provide an articulated line of reasoning as to how the proposed modification of Erimli using the alleged teachings of West would have been implemented. Additionally, it would not have been obvious to modify Erimli to obtain Applicant's invention, since no proper line of reasoning supporting such a modification may be provided, because Erimli teaches away from any such modification, and, further, any such modification would have changed the principle of operation of Erimli.

For example, claim 1 recites:

A method of managing flow of datagram traffic, the method comprising:

receiving datagrams from a first port of a first device at a first port of a second device using a pathway that is operably connected to a second port of the first device and a second port of the second device;

determining an individual port on the first device that is causing oversubscription of the first port of the second device;

transmitting a pause frame from the second device to the first device, the pause frame causing the individual port to pause transmission of the datagrams using the pathway, independently of a source address of the datagrams; and

receiving datagrams from a third port of the first device at the first port of the second device using the pathway, while the individual port on the first device is paused.

The Final Office Action alleges at paragraph 4 that Erimli discloses all the elements of claim 1, except “...transmitting the pause frame independently of a source address of the datagrams,” and relies on West for this teaching. Specifically, the Office Action states that West discloses at column 5, lines 51-59 that “...if backpressure signals are active, the transmission of the corresponding category of data is stopped to avoid egress port buffer overflow. Lower priority data can be transmitted when the backpressure signal is active for higher priority data. Also, claim 14, discloses if an amount of data stored in one of the egress queues of an egress interface exceeds a predetermined threshold, the egress scheduler transmits a backpressure signal to a corresponding ingress interface, and wherein in response to the backpressure signal, the corresponding ingress interface prevents data having a service class associated with the queue of the egress interface from being transmitted to the egress interface, while allowing data of other service classes to be transmitted to the egress interface.” The Office Action goes on to state that (with emphasis added) “...it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the pause frame transmission method of Erimli to include port-based pause transmission taught by West et al. in order to decrease the congestion caused by overloading ports for specific type of data and to increase the high priority data success rate.”

In response, Applicant first notes that in order to establish a *prima facie* case of obviousness, the examiner must interpret the relevant claim, define one or more prior art reference components relevant to the claim, ascertain the differences between the one or more prior art reference components and the elements of the claim at issue, and adduce objective evidence which establishes, under a preponderance of the evidence standard, a teaching to modify the teachings of the prior art reference components such that the prior art reference components can be used to construct a device substantially equivalent to the claim at issue. This last step generally encompasses providing objective evidence teaching how to modify the prior art components to achieve the individual elements of the claim at issue, and providing objective

evidence teaching **how to combine** the modified individual components such that the claim, as a whole, is obtained. MPEP § 2141; MPEP § 2143, emphasis added.

As referenced above, the present Office Action fails to provide any articulated line of reasoning as to **how** Erimli would have been modified by West to arrive at the invention of Applicant's claim 1. For example, the stated reasoning of the Office Action is merely a conclusory statement that the alleged modification would have resulted in some advantage (i.e., to decrease the congestion..." as reproduced above). Such conclusory statements of exactly this type are forbidden to serve as the sole support for an obviousness rejection. For example, "[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." In re Kahn, 441 F. 3d 977, 988 (CA Fed. 2006).

Further, as stated above, such articulated reasoning must include **how** the alleged modification would have been made. Applicant respectfully submits that the present Office Action fails completely in this regard. For example, the Office Action does not provide any description of how Erimli would have been altered (e.g., any element or component of Erimli that would have been modified or replaced, or any element or component of West that would have been used for any such modification/replacement of, or addition to, Erimli).

Moreover, Applicant submits that West is directed to "...distributed control of data flow in a network switch..." See West, column 2, lines 12-13. That is, as is apparent from, e.g., FIG. 2 of West, West is directed to *intra* switch data flow control, whereas Erimli is directed to "...communication of data frames *between* stations..." See, e.g., Erimli, Abstract, lines 1-2. However, the rejection fails entirely event to attempt to explain or even acknowledge the ways in which the *inter*-device communications of Erimli would have been modified by the *intra* device communications of West to arrive at Applicant's claimed invention.

Further, as also referenced above, it would not have been obvious to modify Erimli to obtain Applicant's invention, because no proper line of reasoning supporting such a modification may be provided, because Erimli teaches away from any such modification, and, further, any such modification would have changed the principle of operation of Erimli.

More specifically, as described in Applicant's previous responses, and here with emphasis added, "**Source-Based** Flow Control Across Multiple Devices ...The present invention

is directed to a **source-based** flow control mechanism in a network device, such as multiport switch 180. The present invention modifies a conventional MAC control pause frame to **include a source address field relating to the source of the congestion**. The multiport switch 180 ... **identifies a source address** associated with a congestion condition and transmits a MAC control pause frame including the **identified source address**. A second switch receives the MAC control pause frame and **suspends transmission to multiport switch 180 of data frames having the source address included in the pause frame**. The second switch may also identify the port **associated with the source address** included in the pause frame. The second switch may then transmit a similar MAC control pause frame on the port **associated with the source address**.” Erimli further discloses, “(t)he multiport switch 180A may then transmit the MAC control pause frame 600 (**including source address field 610**)... (t)he multiport switch 180B may also perform an address lookup operation to **identify the port associated with the source address** in source address field 610” (of the MAC control pause frame). Thus, it is apparent that the entirety of Erimli is directed to source-based flow control of data between network devices that relies on the identification of a desired source address.

In contrast, claim 1 recites causing the individual port to pause transmission of the datagrams using the pathway, independently of a source address of the datagrams. For example, Applicant’s description discloses that an individual port may be paused selectively, based on a threshold value (for datagram traffic) stored and associated with the individual port. Although such a pausing operation may be executed while taking a source address of datagrams into account, the operation of selectively pausing the port in question is clearly disclosed as being executed based on a volume of data traffic, independent of source address(es) of the individual datagrams.

Thus, because the entirety of Erimli is directed to “source-based flow control” as referenced above, no reasonable interpretation of Erimli may be made in which Erimli discloses or renders obvious the selective pausing of an individual port, independent of a source address(es) of datagrams transmitted thereover, as recited in claim 1. Specifically, modifying Erimli to make the pausing of transmitted datagrams independent of source addresses thereof would have changed the principle of operation of Erimli. However, the MPEP states at MPEP 2143.01(VI) that “if the proposed modification or combination of the prior art would change the

principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious. *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959)”

Further, and similarly, Applicant submits that in any obviousness rejection, Erimli must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention. *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), *cert. denied*, 469 U.S. 851 (1984), as required by MPEP 2141.02(VI). Erimli clearly discloses source address-based pausing of frames, which leads away on its face from Applicant’s claim of pausing which is independent of source address(es).

Applicant previously asserted at page 12 of the response filed July 13, 2010 that “...even if Bordogna or another reference were cited which provided the missing element(s) of Erimli, Applicant submits that Erimli would not have been properly modified to include such missing elements, because Erimli teaches away from such a modification and such a modification would have changed a principle of operation of Erimli (i.e., the principle that pausing should be source-based).” The present Office Action, however, states at paragraph 10 that Applicant’s previous arguments “...are moot in view of the new ground(s) of rejection.” While Applicant understands that West is a newly-cited and applied reference and that the current rejection may therefore be considered new, Applicant submits that the new rejection does not at all render moot Applicant’s previous arguments in the present circumstances. In fact, as just reproduced, Applicant specifically stated that such a new rejection in which the previously-cited Bordogna might be replaced by a new reference (here, West) would still suffer from the same deficiencies as the previous rejection, and, in fact, as just described, such is the case with the present rejection. Therefore, in the event that the present application does not proceed immediately to allowance an issuance, Applicant respectfully submits that it would be improper for any immediately succeeding office action to be made final, because such action would deprive Applicant of Applicant’s right to consider the Office’s response(s) to Applicant’s previous arguments in the context of a non-final rejection.

In conclusion, independent claim 1, as well as dependent claims 2-10, are allowable for at least the above reasons. Independent claims 11, 21, 24, 31, and 33 recite the same or similar features, and are thus allowable for at least the same reasons, along with their respective

dependent claims. For example, independent claim 11 recites, “signaling the first port of the first device to continue sending datagrams to the first port of the second device at a reduced rate, independently of a source address of the datagrams.” As described above, Erimli discloses source-based control of transmitted frames which are transmitted through a plurality of ports, while West may not be properly used to modify Erimli to arrive at the invention of claim 11 for the reasons stated above. Consequently, even if Levine is said to disclose a reduction in transmission rate of such transmitted frame as alleged by the Final Office Action, Applicant submits that no proper modification of Erimli based on West may be said to render obvious “signaling the first port of the first device to continue sending datagrams to the first port of the second device at a reduced rate, independently of a source address of the datagrams,” as recited in claim 11.

### ***Conclusion***

It is believed that all of the pending claims have been addressed. However, the absence of a reply to a specific rejection, issue or comment does not signify agreement with or concession of that rejection, issue or comment. In addition, because the arguments made above may not be exhaustive, there may be reasons for patentability of any or all pending claims (or other claims) that have not been expressed. Finally, nothing in this paper should be construed as intended to concede any issue with regard to any claim, except as specifically stated in this paper, and the amendment of any claim does not necessarily signify concession of unpatentability of the claim prior to its amendment. In particular, Applicant traverses any purported response to Applicant’s previously-presented arguments from any preceding response. Applicant preserves the right to assert and appeal such previously-presented arguments as may be appropriate during prosecution of the present application.

Applicant believes that all the application is condition for examination on the merits and respectfully requests such examination. The Examiner may telephone Applicant’s attorney (202-470-6452) to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 50-3521.

Respectfully submitted,

Brake Hughes Bellerman LLP

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By: /William G. Hughes, Reg. No. 46,112/

William G. Hughes

Reg. No. 46,112